

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

BMS SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**PLAINTIFFS' SUPPLEMENTAL SUBMISSION IN SUPPORT OF FINAL APPROVAL
OF THE REBALANCED BMS SETTLEMENT**

Plaintiffs, by their counsel, submit this supplemental brief in support of final approval of the rebalanced Bristol-Myers Squibb Company ("BMS") settlement, which settlement is scheduled for hearing on July 7, 2011. In sum, Plaintiffs timely completed a supplemental notice mailing concerning the rebalancing of the settlement consideration and received (i) no new objections from third-party payor ("TPP") class members and (ii) only four new objections from consumers whose distributions were reduced because they received BMS drugs for which the Court previously found no liability or damages.

In compliance with the Court's Order Directing Notice of Settlement Revision to Affected Class Members and Scheduling Fairness Hearing (Dkt. No. 7555), Settlement Administrator Rust Consulting, Inc. ("Rust") mailed the Notice of Revision to Proposed Class Action Settlement Involving Certain Chemotherapy Drugs Sold by BMS (the "Supplemental Notice"). The Supplemental Notice was mailed on May 26, 2011 to 715 Class 2 and Class 3 TPPs who had previously filed a claim form. Declaration of Daniel Coggeshall Regarding BMS Supplemental Notice ("Coggeshall Decl."), ¶ 3. On that same date, Rust also mailed the Supplemental Notice to 3,922 consumer Class members who had filed a claim form and whose

settlement amount under the revised distribution formula calculated to less than the original settlement amount. *Id.*, ¶ 4.

As the Court is aware, the Supplemental Notice advised affected Class members of the change in the settlement terms. The objection deadline was July 1. Class Counsel have not received any objections from any of the 715 TPPs. Out of the 3,922 consumers who received the Supplemental Notice, we have received just four objections.

The four objections were filed by Claimants 5541, 11986, 13152 and 17292. Each of these objectors' total recovery has declined because they were administered (i) Paraplatin, a "no damage" drug, and/or (ii) Taxol during time periods in which the Court found no liability in the Massachusetts-only bench trial. Under the revised distribution formula, their prior recovery for these administrations was replaced by the \$50 flat payment per drug. Claimant No. 17292 also has eligible administrations of Taxol in 2002, which will receive double damage. Coggeshall Decl., ¶ 5. Thus, with the exception of this latter objector, the objectors have not incurred any damage under the Court's prior rulings and Dr. Hartman's calculations. Nonetheless, they are receiving some compensation in the proposed settlement. Each objector, consequently, is receiving *more* than their actual damages under the revised distribution formula.

Class Counsel continue to believe that the BMS Settlement, as revised, is fair and reasonable. We respectfully request that the Court grant final approval.

DATED: July 5, 2011

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, ***Plaintiffs' Supplemental Submission in Support of Final Approval of the Rebalanced BMS Settlement***, to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on July 5, 2011, a copy to LEXISNexis File & Serve for posting and notification to all parties.

/s/ Steve W. Berman

Steve W. Berman